



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Henderson County, Texas

FY2022 Indigent Defense Expenses

Final Report

February 2025

Table of Contents

EXECUTIVE SUMMARY	3
DETAILED REPORT	4
BACKGROUND INFORMATION	4
County Background	4
Commission Background.....	4
Formula Grant.....	4
DETAILED FINDINGS AND RECOMMENDATIONS	5
APPENDICES	10
APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT.....	11
APPENDIX B – CRITERIA.....	13
APPENDIX C – DISTRIBUTION LIST	14

EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted an on-site fiscal monitoring review of Henderson County on April 4, 2023. Email exchanges continued until May 31, 2023. The fiscal monitor reviewed financial records to determine whether grant funds were spent in accordance with the terms and conditions of TIDC grants.

TIDC reviewed the expenditure period of October 1, 2021, through September 30, 2022 (FY2022).

SUMMARY OF FINDINGS

- The FY2022 Indigent Defense Expenditure Report (IDER) submitted in accordance with Texas Government Code §79.036(e) was not supported by financial data provided and included unallowable general court expenditures and excluded allowable defense-related expenditures from the IDER.

OBJECTIVE

The objectives of this review were to:

- Determine the accuracy of the Indigent Defense Expenditure Report.
- Determine whether grant funds were used for authorized purposes in compliance with laws, regulations, and the provisions of the grant.
- Validate policies and procedures relating to indigent defense payments.
- Provide recommendations pertaining to operational efficiency.
- Assist with any questions or concerns on the indigent defense program requirements.

SCOPE

TIDC reviewed the County's indigent defense expenditures to ensure compliance with applicable laws, regulations, and the provisions of the grants for FY2022. The records reviewed were provided by the Henderson County Auditor's Office. Compliance with other statutory indigent defense program requirements was not included in this review.

METHODOLOGY

To accomplish the objectives, the fiscal monitor met with staff from the County Auditor's Office. The fiscal monitor reviewed:

- Random samples of paid attorney fee vouchers;
- General ledger transactions provided by the Henderson County Auditor's Office;
- Indigent Defense Expenditure Report (IDER);
- Attorney fee schedule;
- Any applicable contracts; and
- The County's local indigent defense plan filed with TIDC.

DETAILED REPORT

BACKGROUND INFORMATION

County Background

Henderson County was established on April 27, 1846, and was named in honor of James Pinckney Henderson. Henderson was appointed by Sam Houston as the first attorney general of the Republic of Texas and later as secretary of state after the death of Stephen F. Austin. After the Republic of Texas became a state, James Pinckney Henderson was elected the first governor of the State of Texas.

Henderson County is located in East Texas between the Neches and Trinity Rivers. The current population is estimated at 83,220 and the county seat is Athens. Henderson County occupies an area of 948 square miles, of which 75 square miles is water. The County is bordered by Anderson, Cherokee, Ellis, Freestone, Kaufman, Navarro, Smith, and Van Zandt Counties.

Henderson County is served by three district courts, two county courts at law, and the constitutional county court.

Commission Background

In January 2002, the Texas Legislature established the Texas Task Force on Indigent Defense. In May 2011, the Legislature changed the agency's name to the Texas Indigent Defense Commission (TIDC), effective September 1, 2011. TIDC is a permanent standing committee of the Texas Judicial Council and is administratively attached to the Office of Court Administration (OCA).

TIDC's mission is to protect the right to counsel and improve indigent defense.

TIDC's purpose is to promote justice and fairness for all indigent persons accused of crimes, including juvenile respondents, as provided by the laws and constitutions of the United States and the State of Texas. TIDC conducts these reviews based on the directive in Section 79.037 Texas Government Code, to "monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant..." as well as Section 173.401(a), Texas Administrative Code, which provides that "the Commission or its designees will monitor the activities of grantees as necessary to ensure that grant funds are used for authorized purposes in compliance with laws, regulations, and the provisions of the grant."

Formula Grant

The County submitted the FY2022 indigent defense online grant application to assist in the provision of indigent defense services. Henderson County met the formula grant eligibility requirements and was awarded a \$65,514 formula grant.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

Under Section 79.036(e) of the Texas Government Code, the county auditor or designated person shall prepare and send to the Commission in the form and manner prescribed by the Commission an analysis of the amount expended by the county for indigent defense in each court and in each case in which appointed counsel are paid. Henderson County prepared and submitted the FY2022 Indigent Defense Expenditure Report (IDER) in accordance with Texas Government Code §79.036(e); however, the reported amounts were not supported by the financial data provided.

Attorney Fees:

Henderson County provided the general ledger of activity for indigent defense attorney fees broken out by type of case and by court. TIDC compared the ledger amounts to the reported amounts on the IDER. The amounts did not support each other. The County-provided ledgers listed \$4,275 more in attorney fees than the amount reported on the IDER.

The amount of attorney fees reported for juvenile cases paid on the IDER for the 3rd District Court was \$350, while the general ledger included \$1,400 for juvenile cases.

The overall amount of attorney fees reported on the IDER for the 392nd District Court was \$2,230 less than the amount recorded on the general ledger. The ledger indicates that attorney Linda Altier was paid \$11,225, but the amount reported on the IDER for her was \$8,995.

The amount of attorney fees reported on the IDER for the County Court at Law (CCL1) was \$495 less than the amount recorded on the general ledger. The ledger indicates that attorney Samuel McCammon Smith was paid \$5,870, but the amount reported on the IDER was \$5,375.

The attorney fees for County Court at Law No 2 (CCL2) were reported correctly. However, the amount reported on the IDER was \$500 less than the general ledger due to a payment of \$500 to Dr. Allen PhD being included on the general ledger account for attorney fees.

The general ledger data for attorney fee expenses includes both criminal and civil cases. The review of the civil case attorney fees revealed that the civil cases were writs of habeas corpus, with the underlying case a criminal case; therefore, the cost was properly included with criminal attorney fees. However, the writ should not be counted as a separate disposed case when reporting the number of cases disposed and paid. The purpose of these habeas corpus cases is to determine the legality of continued pretrial detention in connection with the criminal complaint and are similar to other hearings for the criminal case. The County included the count of the paid vouchers for these writs of habeas corpus as additional paid cases on the IDER, which overstated the number of disposed criminal cases.

Court-related Expenses:

In addition to the attorney fee ledgers, TIDC reviewed the general ledger activity for court-related expenses. When comparing the amount listed as allowable on the spreadsheet to the reported amount on the IDER, the following differences were noted. The amount reportable for CCL1 was \$1,093.75, but no amount was reported on the IDER. The amount listed as reportable for CCL2 was \$1,250 however \$12,500 was reported.

Additionally, the County included some unallowable general court expenditures while excluding some eligible expenditures.

TIDC reviewed fourteen vouchers listed on the court-related expenditure spreadsheet provided. Of these fourteen vouchers, eight were listed as allowable on the spreadsheet and the remaining six were highlighted as non-allowable on the spreadsheet. All of the court-related expenses were listed under the expert witness category on the IDER.

A summary of sample vouchers reviewed that were reported on the IDER are as follows:

1. Laurie C. Brown, CSR invoice \$168
2. Thomas G. Allen PhD invoice \$718.75
3. Attorney J. Brett Harrison requested reimbursement of expenses of \$350.
4. Dr. Lee Ann Grossberg –\$1,600.
5. Thomas G. Allen, PhD– \$687.50
6. TT Investigations – \$1,222.50
7. Philip R. Taft, PsyD & Associates PLLC- \$1,093.75.
8. Attorney J. Brett Harrison requested reimbursement of expenses of \$1500.

The review of the sample vouchers listed above that were reported on the IDER indicates three vouchers for competency to stand trial (2, 5, & 7) and a voucher for a transcript record (1) that was provided to the Henderson County Sheriff's Office.

The three vouchers for competency evaluations are considered general court expenditures and are not eligible to be included on the IDER. The voucher for the sheriff's office does not appear to be for indigent defense costs and would be non-allowable for the IDER.

Additionally, the TT Investigation voucher should be listed under the investigation column on the IDER, and not under the expert witness category.

Summary of sample vouchers reviewed that were not reported on the IDER are as follows:

1. TT Investigation in the amount of \$1,238.
2. Reimburse attorney Files Harrison, PC- \$ 130.
3. Realtime Deposition Services for transcription of court record for an indigent defendant - \$996.00.
4. Lexitas Legal deposition cost - defense team requested payment of \$872.
5. Brandi Ray CSR – request for record to be used by appellant attorney - \$1,876.
6. Brandi Ray, CSR – transcript of record for pleas and sentencing, copy provided to Henderson County attorney and copy to court-appointed attorney - \$42.

Of the sample vouchers reviewed that were not reported on the IDER, five appeared eligible while the sixth one may be eligible.

1. The TT investigation invoice in the amount of \$1,238 was requested by the defense team with a motion for the expense indicating that it was specific to a preparation of a defense. This cost should have been included on the IDER under the “Investigation Expenditures” category.
2. The expenses requested by the attorney, especially if included on the attorney fee voucher, are typically defense-related. The cost for the process server should be included on the IDER under the “Other Litigation Expenditures” category.
3. The Realtime deposition cost was requested by the defense team with a motion for the expense, indicating that it was specific to a preparation of a defense. This would be eligible for the IDER and should be included under “Other Litigation Expenditures.”
4. The Lexitas legal expense was requested by the defense team with a motion indicating that it was specific to a preparation of a defense. This would be eligible for the IDER and could be included as “Other Litigation Expenditures.”
5. The expense for the court reporter, Brandy Ray CSR, to transcribe a court record was requested by the defense team with an indication that the expense was specific to an appellat filing and would be eligible for the IDER under “Other Litigation Expenditures.”
6. It is unclear if the expense for the court reporter, Brandy Ray CSR, to provide a transcript of record for pleas and sentencing to the Henderson County attorney and a copy to court-appointed attorney in the amount of \$42 is eligible for the IDER. Additional information would be needed. If the cost of \$42 was to transcribe the record for an appeal, then 100 % of the expense would be eligible for the IDER. TIDC allows for the cost to transcribe a record to be reported on the IDER as the defense team needs the record to file an appeal. However, if the cost of \$42 was to provide a copy of the record after it was transcribed, then only the amount applicable to the defense team would be eligible on the IDER. With this invoice, since a copy was provided to the Henderson County attorney as well as the defense team, the cost to provide a copy of the record to the County attorney would not be eligible to report on the IDER, therefore the cost might need to be split 50/50.

The cost for a court reporter to be in the courtroom to create a record of the proceedings are general court expenses. The court reporter costs that are eligible indigent defense costs are those needed to prepare a transcript for an indigent defendant’s appeal.

A request for a mental health evaluation to determine competency to stand trial is typically a general court expense. The mental health examinations that are considered indigent defense expenses are those requested by the defense counsel where the results are shared exclusively with the defense team. No mental health evaluations requested by the judge or prosecuting attorney should be reported as indigent defense expenses. Support that the expense is for a mental health expert working for the defense under derivative attorney-client privilege to assist in the criminal defense of an indigent defendant must be documented to include the expenditure on the IDER. An

order granting an *ex parte* defense motion requesting funds for a mental health defense expert is generally sufficient to establish eligibility as an indigent defense expenditure. An evaluation of competency to stand trial is not an eligible indigent defense expense, regardless of which party may initiate consideration of ordering such an evaluation.

The County's formula grant award is based partially on the amount of the expenses reported on the IDER. With the inaccuracies of the amounts reported, the included ineligible expenses, and the excluded eligible expenses, it is unclear if the authorized formula grant award is greater than it should be. The inclusion of the number of disposed civil cases with the number of disposed criminal cases has overstated the appointed attorney percentage rate for Henderson County.

Please refer to the Indigent Defense Expenditure Report Procedure Manual when preparing the IDER. The manual is updated each year and for FY2022 can be found on the TIDC website at: <https://tidc.texas.gov/media/02ad1jlu/fy22-ider-manual-final.pdf>

Recommendation:

1. The County must develop procedures to verify the accuracy of IDER data prior to the submission of the report.
2. The County must develop procedures to identify and record expenses for mental health experts requested by the appointed defense counsel for the exclusive use of defense counsel in preparation of a defense. Procedures must distinguish such expenses from examinations to determine competency to stand trial, which are considered general court expenses and not eligible for the IDER.

Henderson County Action Plan

1. Verification of IDER Data

In response to the recommendation that the County must develop procedures to verify the accuracy of IDER data prior to the submission of the report, we have initiated a review of our current processes and will implement the following:

- We will establish a dedicated verification team to review the data prior to submission.
- The team will be responsible for cross-checking all figures, ensuring the data aligns with supporting documentation, and reconciling any discrepancies.
- We will implement a checklist to ensure all necessary information is captured, validated, and entered accurately into the IDER system.
- The team will conduct a final review of the data with the department heads to confirm its accuracy before submission.
- These procedures will be in place before the next IDER submission cycle to ensure full compliance with reporting requirements.

2. Identification and Recording of Expenses for Mental Health Experts

We acknowledge the need to develop procedures to identify and record expenses related to mental health experts requested by the appointed defense counsel, for the exclusive use of defense counsel, in preparation of a defense. Additionally, we will distinguish these from general court expense related to competency examinations. To address this, we will implement the following actions:

- We will establish a clear guideline to differentiate between mental health expert expenses requested by defense counsel and those related to competency evaluations for court purposes.
- A specific expense code will be created in our financial system to categorize these defense- related expert expenses separately from general court expenses
- A process will be developed for defense counsel to submit written request for mental health expert services, specifying the intended use of the expert's services. This documentation will be reviewed by our finance department for appropriate classification and recording.
- We will train our Audit staff on these procedures to ensure proper handling of such expenses moving forward.
- Additionally, we will implement regular audits to ensure that these expenses are appropriately tracked and recorded according to the guidelines outlined above.

Contact person(s): *Ms. AnnMarie Monk/ County Auditor*

Completion date: *January 29, 2025*

Conclusion

TIDC thanks Henderson County officials and staff for their professionalism and assistance in completing this review. TIDC stands ready to assist Henderson County when any questions and concerns arise in the future.

APPENDICES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

HENDERSON COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2019	2020	2021
Population Estimate	82,422	83,220	83,220
Juvenile Assigned Counsel	\$20,319	\$11,763	\$14,484
Capital Murder	\$49,600	\$31,657	\$1,436
Adult Non-Capital Felony Assigned Counsel	\$497,812	\$565,103	\$597,451
Adult Misdemeanor Assigned Counsel	\$116,775	\$118,923	\$131,140
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$3,475	\$15,331	\$195
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$0	\$6,364	\$0
Expert Witness	\$0	\$37,634	\$26,162
Other Direct Litigation	\$3,494	\$0	\$0
Total Court Expenditures	\$691,474	\$786,774	\$770,868
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$0	\$26,373	\$26,373
Total Public Defender Expenditures	N/A	N/A	N/A
Total Court and Administrative Expenditures	\$691,474	\$813,147	\$797,241
Formula Grant Disbursement	\$68,888	\$71,097	\$70,512
Reimbursement of Attorney Fees	\$83,112	\$74,403	\$113,977
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Public Defender Cases	N/A	N/A	N/A
Total Assigned Counsel Cases	1,325	1,341	1,752

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Henderson County				
Year	2019	2020	2021	Texas 2021
Population (Non-Census years are estimates)	82,422	83,220	83,220	29,149,480
Felony Charges Disposed (from OCA report)	1,089	935	1,094	233,848
Felony Cases Paid	875	945	1,292	179,017
% Felony Charges Defended with Appointed Counsel	80%	101%	118%	77%
Felony Trial Court-Attorney Fees	\$547,412	\$596,760	\$598,887	\$117,687,277
Total Felony Court Expenditures	\$619,987	\$634,804	\$619,987	\$129,509,185
Misdemeanor Charges Disposed (from OCA report)	1,136	1,098	1,001	329,309
Misdemeanor Cases Paid	390	357	401	143,702
% Misdemeanor Charges Defended with Appointed Counsel	34%	33%	40%	44%
Misdemeanor Trial Court Attorney Fees	\$116,775	\$118,923	\$131,140	\$36,970,435
Total Misdemeanor Court Expenditures	\$116,775	\$119,723	\$136,202	\$37,596,320
Juvenile Charges Added (from OCA report)	19	20	23	15,024
Juvenile Cases Paid	58	35	57	22,404
Juvenile Attorney Fees	\$20,319	\$11,763	\$14,484	\$8,221,663
Total Juvenile Expenditures	\$20,319	\$11,763	\$14,484	\$8,392,554
Total Attorney Fees	\$687,981	\$742,776	\$744,706	\$166,177,254
Total ID Expenditures	\$691,474	\$813,147	\$797,241	\$277,829,412
Increase in Total Expenditures over 2001 Baseline	87%	120%	116%	213%
Total ID Expenditures per Population	\$8.39	\$9.77	\$9.58	\$9.52
Commission Formula Grant Disbursement	\$68,888	\$71,097	\$70,512	\$21,929,443
Cost Recouped from Defendants	\$83,112	\$74,403	\$113,977	\$9,536,138

Source: Texas Indigent Defense Commission records

APPENDIX B – CRITERIA

Criteria

- Uniform Grant Management Standards
- Texas Grant Management Standards
- Texas Government Code, Section 79.036. Indigent Defense Information
- Texas Government Code, Section 79.037. Technical Support; Grants
- Code of Criminal Procedures Art 26.04 Procedures for Appointing Counsel
- Code of Criminal Procedures Art 26.05 Compensation of Counsel Appointed to Defend
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter A Rule 174.1
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter A Rule 174.2
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter B Definitions
- FY2022 Indigent Defense Expenditure Report Manual found at:
<https://tidc.texas.gov/media/02ad1jlu/fy22-ider-manual-final.pdf>

APPENDIX C – DISTRIBUTION LIST

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